

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

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| ANTHONY DEFRANCO, |) | |
| |) | |
| Plaintiff, |) | 1:20-CV-00368-SPB |
| |) | |
| vs. |) | RICHARD A. LANZILLO |
| |) | UNITED STATES MAGISTRATE JUDGE |
| OFC. ASHLEY MILLER, SGT. MATTHEW PUTMAN, INDIVIDUAL AND OFFICIAL CAPACITY; OFC. BRANDON WISE, BRYAN FLINCHBAUGH, LIEUTENANT JOHN DOE, JANE DOE, |) | ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT |
| |) | IN RE: ECF NO. 87 |
| |) | |
| Defendants, |) | |

Presently pending on the Court's docket are cross-motions for summary judgment. The deadline for filing such motions was originally set for June 27, 2022. ECF No. 35. On the Defendants' motion, the Court granted an extension until August 1, 2022, to file for summary judgment. ECF No. 68. Defendants filed their motion on July 26, 2022. ECF No. 77. They also filed a supporting brief (ECF No. 78), and a Concise Statement of Material Facts with number exhibits (ECF No. 79). Plaintiff Anthony DeFranco was ordered to respond to the Defendants' motion by August 1, 2022, but received an extension to file to September 22, 2022, on account of an intervening discovery dispute. ECF No. 85.

DeFranco filed a cross-motion for summary judgment on September 19, 2022. ECF No. 27. But as of today's date, DeFranco has not filed any response to the Defendants' motion.

The foregoing procedural history highlights several problems. First, unlike the Defendants, DeFranco never moved for an extension of time to file a summary judgment motion.

Thus, his filing is technically late. Second, even if DeFranco's motion is considered timely, the filing does not comport with our Local Rules. DeFranco's filing is one document containing his motion, a purported brief in support, and several attachments and/or exhibits. *See* ECF No. 37, generally. Our Local Rules, however, require that "each motion and each brief shall be a separate document." LCvR 5.1(F). Nor does DeFranco include in this document a response to the Defendants' Concise Statement. This is required under our Local Rule 56(B)(1). This Rule "is essential to the Court's resolution of a summary judgment motion due to its role in organizing evidence, identifying undisputed facts, and demonstrating precisely how each side proposed to prove a disputed facts with admissible evidence." *Weitzner v. Sanofi Pasteur Inc.*, 909 F.3d 604, 613 (3d Cir. 2018) (citations omitted).

Further, the filing of a cross motion for summary judgment does not excuse DeFranco from properly responding to the Defendants' motion, including with a Responsive Concise Statement of Material Facts as is also required under our local rules. Rule 56(C)(1) requires a party opposing a motion for summary judgment to file a Responsive Concise Statement, which must be filed separately and which "responds to each numbered paragraph in the moving party's Concise Statement of Material Facts by ... admitting or denying whether each fact contained in the moving party's Concise statement of Material Facts is undisputed and or material ... and setting forth the basis for the denial." LCvR 56(C)(1)(a)-(b).

Therefore, given DeFranco's several failures to comply with our Local Rules, the Court ORDERS as follows:

1. Inasmuch as DeFranco is acting pro se and has been granted in forma pauperis status, and because our Local Rules contemplate, to some limited extent, an exception to the separate documents requirement, the Court will accept DeFranco's motion for summary judgment and accompanying brief and exhibits as currently docketed. *See* LCvR 5.1(G).

2. However, DeFranco is hereby ORDERED to file a Concise Statement of Materials Facts within fourteen days, as required by LCvR 56(B)(1).
3. Further, the Court sua sponte grants DeFranco an additional fourteen days to file his response to the Defendants' motion for summary judgment as a matter of law. His response must include a Responsive Concise Statement of Material Facts and a Memorandum in Opposition to the motion. Each shall be filed as separate documents no later than October 12, 2022. *See* LCvR 56(C)(1)-(1).

SO ORDERED.

DATED this 28th day of September, 2022.

BY THE COURT:



RICHARD A. LANZILLO
UNITED STATES MAGISTRATE JUDGE